ONG ENG BING & ANOR.

v.

INDIAN OVERSEAS BANK

COURT OF APPEAL, SINGAPORE
KULASEKARAM J
FA CHUA J
AP RAJAH J
[CIVIL APPEAL NO. 16 OF 1982]
25 JANUARY 1983

CONTRACT: *Option to purchase property duly exercised - Owner refused to complete sale in favour of the appellants - Property sold by public auction - Bidder did not proceed with the purchase due to pending caveats and civil suit - Whether the appellants had the right to purchase the equity of redemption.*

Abacus Pte. Ltd., the owners of the property in question mortgaged it to the respondents under an Instrument of Mortgage dated 7 November 1978. On 22 August 1979 Abacus granted an option to one Ho to purchase the property at the price of $545,000. By another option bearing the same date, Ho granted to the appellants the right to purchase the property for $855,000. Both the options were duly exercised by the parties concerned on 15 September 1979 but both Ho and Abacus refused to complete the sale in favour of the appellants.

Meanwhile the respondents sold the property by public auction on 2 July 1981 to the highest bidder for $2,600,000. The bidder did not proceed with the purchase in view of the caveats and the pending High Court suits involving the property. The appellants contended that since the first and second option were exercised, they have acquired an interest in the property and that they have an equitable right to purchase the equity of redemption from Abacus. On this contention the appellants claimed for, *inter alia*:

(1) an injunction restraining the respondents from selling the property by public auction, private contract or otherwise on 2 July 1981 or any other occasion.

(2) a total discharge of the property by the respondents in favour of the appellants subject to payment by the appellants to the respondents of the sum of $900,000 and legal charges in respect of the total the discharge.

This is an appeal against the order by the learned Chief Justice who dismissed the appeal by the appellants against the decision of the learned Registrar. The question was, whether a person, who had only an unfulfilled contract to purchase the equity of redemption from the Owner-Mortgager, had the right to redeem the mortgaged property form the Mortgagee.

Held:
Before a contract is carried into effect the purchaser cannot, against a stranger to the contract, enforce equities attaching to the property. In the instant appeal the respondents were strangers to the contract.

[Appeal dismissed with costs.]

Cases referred to:
Tasker v. Small [1824-34] All ER. Rep 317

Other sources referred to:
Gibson's Conveyancing (21st Edn.,) at p. 321

JUDGMENT

AP Rajah J:

This is an appeal against an Order made by the learned Chief Justice whereby he dismissed an appeal by the plaintiffs (appellants) against the decision of the learned Registrar, on an application by the defendants (respondents), ordering *inter alia*, that (1), the statement of claim be struck out and (2) the Plaintiffs' case be dismissed. At the end of the hearing we dismissed the appeal with costs and said that we would give our reasons later which we now do.

The facts relevant to this appeal are as follows:

Abacus Pte. Ltd. (Abacus) were at all material times the owners of the property known as Nos. 27-33 Birch Road, Singapore (the Property). They mortgaged the Property to the defendants under an Instrument of Mortgage, dated 7 November 1978, whereby the defendants, at the request of the mortgagors Abacus, agreed to stay or otherwise withhold all execution upon the Judgment obtained by the defendants summarily against the seven defendants in Suit 417 of 1978 for approximately $5,000,000. The mortgage deed was stamped only for $4,500/- being the amount of duty payable on $900,000. However, on the 29 September 1981 the mortgage deed was further stamped by the Defendants to cover an aggregate amount of $5,890,000.

By an option in writing dated 22 August 1979 (the First Option) Abacus granted to one Ho an option to purchase the Property at the price of $545,000. By another option in writing (the Second Option), bearing the same date as the First Option, Ho granted to the plaintiffs an option to purchase the Property for $855,000. These two options were duly exercised by the parties concerned on 15 September 1979, but both Ho and Abacus have refused to complete the sale in favour of the plaintiffs.

In exercise of their power of sale the defendants proceeded to sell the Property by public auction on 2 July 1981 when it was sold to the highest bidder for $2,600,000. However, the purchaser has not proceeded with the purchase in view of the caveats and the pending High Court suits involving the Property.

The plaintiffs contended that as a result of the First and Second Options having been exercised they have since then acquired an interest in the Property in that they now have an equitable right to purchase the equity of redemption from Abacus.

On these facts and on this contention the plaintiffs in their action against the defendants (Suit No. 2180 of 1981) claimed, *inter alia*, (1) an injunction restraining the defendants from selling or concur in selling the Property or any part thereof by public auction or private contract or otherwise howsoever on 2 July 1981 or any other occasion and (2) a total discharge of the Property by the defendants in favour of the plaintiffs subject to payment by the plaintiffs to the defendants of the sum of $900,000 and legal charges in respect of the total discharge.

At the hearing of this appeal Counsel for the appellants said that the issue in this appeal is whether a purchaser of immovable property- in the Plaintiffs' case, at best they had a contract to purchase the equity of redemption which was with Abacus - has a right to redeem the property purchased. So the question to be answered in our case even more specifically is, whether a person, who has only an unfulfilled contract to purchase the equity of redemption from the Owner-Mortgagor, the right to redeem the mortgaged property from the Mortgagee. In support of his proposition Counsel cited to us a passage from *Gibson's Conveyancing* (21st Edn.,) at p. 321 captioned "Who Can Redeem".

> The right to redeem belongs not only to the mortgagor and the persons to whom it is expressly reserved by the provisions of the mortgage deed, but also to all persons **claiming under mortgagor, or having any interest in the equity of redemption**. This includes the mortgagor's personal representatives, a purchaser and a mortgagee of the equity of redemption, a trustee in bankruptcy, and a judgment creditor of the mortgagor; sureties for the payment of the mortgage debt; and even a mere lessee of the premises, whose lease, being made by the mortgagor after the date of the mortgage, and without any power to make it, is not binding on the mortgagee.
>
> (Emphasis is mine)

It is trite law that the doctrine of trusteeship and equitable ownership applies only as between parties to the contract.

> "Until completion of the contract by conveyance the vendor continues to be the person to enforce any right which require the possession of the legal estate and the purchaser is not entitled to enforce his contract against third parties." (*Williams on Title* - 4th Edn. p. 714).

In his footnote to this passage the author cities Lord Cottenham in the case of *Tasker v. Small* [1824-34] All ER Rep 317 at 320G where the learned Lord Chancellor said:

> It was argued at the Bar that the plaintiff was, in equity, invested with all the rights of Mrs. Small on the principle that by a contract of purchase, the purchaser becomes, in equity, the owner of the property. This rule applies only as between parties to the contract, and cannot be extended so as to affect the interest of others. If it could a contract for the purchase of an equitable estate would be equivalent to a conveyance of it. Before the contract is carried into effect the purchaser cannot, against a stranger to the contract, enforce equities attaching to the property.

Yet again and more appositely and pointedly to the present appeal the Lord Chancellor has this to say at p. 320C:

> He (the plaintiff) is only connected with the property by having contracted to purchase the equity of redemption and until the purchase is completed, he cannot redeem the mortgage.

This being so the phrases **"claiming under the mortgage' or "having any interest in the equity of redemption"** cannot be given the meaning Counsel for the appellants seeks to ascribe to them.

In the instant appeal the respondents (defendants) are strangers to the contract. In the instant case the Court has not been called upon to decide, as between the appellants and Abacus, the question of who enjoys the equity of redemption. In view of what Lord Cottenham had said and as quoted by us, we did not see how the appellants could succeed in their appeal. We accordingly upheld the learned Chief Justice's order and dismissed the appeal with costs.

Also found at [1983] 1 CLJ 269